731. It is interesting to note that the court which rendered the conservative opinion, contrary to the general spirit of the Code, sat in New York, a code state, while the liberal view was announced in the New England circuit, which has generally retained the common law procedure. Possibly this whole discussion in these federal cases was unnecessary, for it has frequently been held, in the absence of any statute whatever, that such a replication raises a perfectly good issue in an action at law. *M'Henry* v. *M'Henry & Co.*, 14 Leg. Int. 292 (Pa.); *Friedburg* v. *Knight*, 14 R. I. 585; *Piper* v. *B. & M. R. R.*, 75 N. H. 228; *U. P. Ry. Co.* v. *Harris*, 158 U. S. 326; *Memphis St. Ry. Co.* v. *Giardino*, 116 Tenn. 368; 1 CHITTY, PLEADING, *553. Compare *Holbrook, Cabot & Rollins Corp.* v. *Sperling*, 239 Fed. 715. On the general subject of equitable defenses in actions at law see "Equitable Defenses under Modern Codes," by E. W. Hinton, 18 MICH. L. REV. 717.

QUO WARRANTO—FORMER DECISION WITH DIFFERENT RELATORS RES ADJUDICATA.—A proceeding in the nature of *quo warranto* was begun in the name of the state on the relation of certain individuals to question the right of a municipal corporation to exist. The defendant city pleaded a former judgment in its favor, in an action commenced by different relators seeking dissolution of the city for similar reasons. *Held*, the judgment in the former action was *res adjudicata* as to the cause of action involved in this suit. *Town of Tallassee* v. *State* (Ala.), 89 So. 514.

If the former proceedings resulted in a judgment on the merits upon the same subject matter, and the parties were the same in the two suits, the former judgment was *res adjudicata* in the later action. 9 ENC. PL. & PR. 611. The principal case agrees with almost unanimous authority that in proceedings in the nature of *quo warranto* the public is the real and the relator a nominal party; a difference in relators then does not result in a difference in the real party interested in the litigation. *State* v. *Harmon*, 31 Oh. St. 250; *Wright* v. *Allen*, 2 Tex. 158; *McClesky* v. *State*, 4 Tex. Civ. App. 322; *Shumate* v. *Supervisors of Fauquier Co.*, 84 Va. 574; *State* v. *Ry. Co.*, 135 Ia. 694; *State* v. *Superior Court*, 70 Wash. 670; *State* v. *Willis*, 19 N. D. 209; *Ashton* v. *City of Rochester*, 133 N. Y. 187; *City Council of Montgomery* v. *Walker*, 154 Ala. 242; *People* v. *Harrison*, 253 Ill. 625. *State* v. *Cincinnati Gas, Light and Coke Co.*, 18 Oh. St. 262, *contra* (*semble*). In a few states a claimant to public office is given a remedy analogous to that of *quo warranto* proceedings, but purely to test his right to the office as against the incumbent. 23 AM. & ENG. ENC. OF LAW (Ed. 2), 616, and cases cited. A judgment in such an action is not *res adjudicata* should another claimant attempt to exercise the same remedy or the state bring *quo warranto* to test the occupant's right to the office. *Modlin* v. *State*, 175 Ind. 511; ANN. CAS. 1913 C 671, note.

SALES—WHAT CONSTITUTES GOOD FAITH IN PURCHASE OF CHATTELS.—B purchased an automobile from P, giving therefor a forged check, and subsequently sold the car for value to D, with whom he was acquainted.